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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re United States Patent Application of:)	Docket No.:	4240-116
Applicants:)	Conf. No.:	5278
)		
Application No.:)	Art Unit:	1609
)		
Date Filed:)	Examiner:	Susanna Hoffer
)		
Title:)	Customer No.:	
)		
POLY-GAMMA-)		
GLUTAMATE HAVING)		
ULTRA HIGH MOLECULAR)		
WEIGHT AND METHOD)		
FOR USING THE SAME)		

23448

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ATTN: Examiner Susanna Hoffer

Fax No. (571) 273-8300

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Number of Pages
Steven J. Hultquist
September 13, 2007
Date

RESPONSE TO AUGUST 14, 2007 RESTRICTION REQUIREMENT IN U.S. PATENT APPLICATION NO. 10/520,557

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Sir:

This responds to the August 14, 2007 Office Action in the above-identified application.

In the August 14, 2007 Office Action, the Examiner has imposed a restriction requirement under the provisions of 35 U.S.C. 121 and 35 U.S.C 372 against claims 1-14, and required that an election be made between:

- Group I, claim(s) 1-3, drawn to poly-gamma-glutamate (PGA).
- Group II, claim(s) 4, drawn to a hydrogel.
- Group III, claim(s) 5, drawn to cosmetics.
- Group IV, claim(s) 6, drawn to foods.
- Group V, claim(s) 7, drawn to feedstuffs.
- Group VI, claim(s) 8, drawn to a water-absorbing agent
- Group VII, claim(s) 9-13, drawn to a mineral absorption-promoting composition.
- Group VIII, claim(s) 14, drawn to a method for using PGA.

Applicants hereby elect, with traverse, Group I claims 1 -3 of the present application.

The restriction is traversed under PCT Rule 13.2 as the common technical feature which contributes to each of the claims, namely poly-gamma-glutamate (PGA) "of at least 5000 kDa" or having "a mean molecular weight between 5000 kDa and 15000 kDa," is the special technical feature that defines the contribution that each aspect of the claimed invention, considered as a whole, makes over the prior art. The examiner's attention is respectfully directed to MPEP § 1850, PCT Rule 13.2 which states:

"Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression 'special technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." (emphasis added)

The examiner, at the last line of page 2 of the August 14, 2007 Office Action, cites U.S. Patent No. 5447732 by Tanimoto et al. as disclosing a composition comprising poly-gamma-glutamate (PGA) at column 4, lines 18-37. The examiner contends 'Tanimoto et al. discloses applicants'

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common special feature precluding applicants from claiming that PGA comprises the "single general inventive concept."

Applicants respectfully disagree.

Tanimoto et al. at column 4, lines 18-37 does not disclose PGA "of at least 5000 kDa" or having "a mean molecular weight between 5000 kDa and 15000 kDa," as claimed by applicants in claims 1-14. Tanimoto et al. at column 4, lines 18-37 teaches one of several forms of polyglutamic acid and not the salt or ester form known as poly-gamma-glutamate, nor does Tanimoto at column 4, lines 18-37 disclose an ultra high molecular weight. The ultra-high molecular weight of applicants' PGA is the common special technical feature defining the contribution each aspect of the claimed invention, considered as a whole, makes over the prior art. The restriction requirement applied against Groups I through VIII is therefore improper and based on the foregoing, it is respectfully requested that the restriction requirement be withdrawn.

Additionally, the examiner's attention is respectfully directed to MPEP § 803 which states:

"[I]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent and distinct inventions." MPEP § 803

The subject matter of the respective Groups I through VIII presents no serious burden on searching by the examiner, since the majority of these searches will involve a search of PGA in the same class and subclass. For example, a search of the claims of Group I, IV, V, VI, and VII, will involve a search for PGA in class 426 Food and other edible material and subclass 234 Processes, Compositions, and Products. Further, only the claim of Group VIII is drawn to a method for using PGA, while all of the other claims are compounds or compositions comprising PGA. As such, a search and examination of these claims can be made without additional "serious burden" to the examiner.

Based on the foregoing, it is requested that the restriction requirement be reconsidered and withdrawn, and the applicants respectfully request that pending claims 1-14 are unitarily examined. If there are any issues that can be telephonically resolved, the examiner is requested to contact the undersigned attorney at (919) 419-9350 to discuss same, in order to expedite the prosecution of the present application.

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Respectfully submitted,



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